



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

William J. Olson
John S. Miles
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370 Maple Avenue West, Suite 4
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MAY 31 2018

RE: MUR 7163

Dear Messrs. Olson, Miles, and Olson:

On November 1, 2016, the Federal Election Commission notified your clients, Joe Miller, Citizens for Joe Miller and Thomas John Nelson in his capacity as treasurer, and Restoring Liberty, LLC, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). On May 22, 2018, the Commission decided to exercise its prosecutorial discretion to dismiss the allegations that Joe Miller and Thomas John Nelson in his official capacity as treasurer, and Restoring Liberty, LLC violated the Act. Accordingly, the Commission closed its file in this matter on May 22, 2018.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003), and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009). The Factual and Legal Analysis, which more fully explain the Commission's findings, is enclosed.

If you have any questions, please contact me at (202) 694-1650.

Sincerely,

Lynn Y. Tran
Assistant General Counsel

Enclosure
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Citizens for Joe Miller and MUR 7163
Thomas John Nelson in his official capacity as treasurer
Joe Miller
Restoring Liberty, LLC

I. INTRODUCTION

The Complaint alleges that Senate candidate Joe Miller; his authorized committee, Citizens for Joe Miller and Thomas John Nelson in his official capacity as treasurer (“the Committee”); and Restoring Liberty, LLC, a Subchapter S corporation Miller owns, violated the Federal Election Campaign Act of 1971, as amended (“the Act”), and Commission regulations by making or accepting prohibited corporate contributions, failing to include appropriate disclaimers on solicitations and campaign materials, failing to report various receipts and expenditures, and fabricating in-kind contributions. Given the specific circumstances of this matter, as discussed below, the Commission dismisses the allegations that Miller, the Committee, and Restoring Liberty violated the Act.

II. FACTUAL BACKGROUND

During the 2016 election cycle, Joe Miller was the Libertarian candidate for the Senate in Alaska, and Citizens for Joe Miller was his principal campaign committee. Miller announced his candidacy on September 6, 2016, after the previous Libertarian candidate for Senate withdrew.¹ Restoring Liberty, LLC is a limited liability company registered as a Subchapter S corporation, and Miller is its sole owner.² Restoring Liberty, LLC operates a website also called Restoring

¹ Response at 3 (Jan. 13, 2017).

² Resp. at 4, Ex. A ¶ 4; Complaint at 2 (Oct. 25, 2016).

1 Liberty, which posts articles and commentary on U.S. and Alaska politics, as well as other
2 news.³ The domain names www.restoringliberty.us and www.joemiller.us both navigate to the
3 Restoring Liberty website.⁴ Miller's campaign website was www.joeforliberty.com.⁵

4 The Complaint alleges that Restoring Liberty made illegal corporate contributions to the
5 Committee in four ways. First, it alleges that the Restoring Liberty website was a "de facto"
6 campaign website for Miller and thus all costs related to it were in-kind contributions to the
7 Committee.⁶ In support, it points to numerous Committee press releases, pro-Miller articles, and
8 op-eds Miller wrote that were posted on that website.⁷ Second, the Complaint alleges that the
9 Restoring Liberty website and its Facebook and Twitter accounts contained links to the
10 Committee's website, and thus were also contributions from Restoring Liberty, LLC.⁸ Third, the
11 Complaint alleges that payments Restoring Liberty received from its corporate sponsors resulted
12 in corporate contributions to the Committee.⁹ The Complaint also contends that the Committee
13 used Restoring Liberty's email list to solicit donations for the Committee.¹⁰ Finally, the

³ Resp. at 5.

⁴ *Id.*

⁵ *Id.*

⁶ Compl. at 2.

⁷ *Id.* at Exs. C, K.

⁸ *Id.* at 2.

⁹ *Id.* at 2-3. The Complaint includes a screenshot of Restoring Liberty's sponsor page, and the three corporate sponsors each appear to be local businesses. *See id.*, Ex. D.

¹⁰ *Id.* at 3.

1 Complaint alleges that an email endorsing Miller and advocating for the defeat of his opponent
2 was sent from a Restoring Liberty email account.¹¹

3 The Complaint also alleges that the Committee failed to include proper disclaimers on
4 Miller's YouTube page, campaign signs, radio ads, and "other materials."¹² In support, the
5 Complaint attaches a picture of a Committee yard sign, although it does not include information
6 about the radio ads or "other materials."¹³ The Complaint states that disclaimers on Miller's
7 internet solicitations were either incorrect or missing entirely.¹⁴

8 Finally, the Complaint alleges a variety of reporting violations. It alleges that the
9 Committee did not report in-kind contributions for the use of the Committee's campaign
0 headquarters, did not report expenditures for campaign signs and other materials, and inflated the
1 value of Miller's use of his own car to bolster the campaign's receipts. Complainant, who is the
2 chair of the Alaska Republican Party, also alleges that the Committee falsely reported a \$4,500
3 in-kind contribution from the party.

4 The Respondents generally deny the allegations. They claim that no corporate
5 contributions resulted from Restoring Liberty's activities because it is an LLC wholly owned by
6 Miller, so any contributions should be attributed to him as an individual. Further, they assert that
7 Restoring Liberty's coverage of the election falls within the Act's media exemption.¹⁵ In

¹¹ Compl. at 3, Ex. H.

¹² *Id.* at 2-3.

¹³ *Id.* at 3-4, Ex. J. The yard sign attached as an exhibit appears to contain a disclaimer stating it was paid for by Joe Miller for U.S. Senate, which was Miller's 2010 committee when he was the Republican candidate for Senate in Alaska.

14 *Id.*

¹⁵ Resp. at 4-5.

1 support, the Response identifies several articles it contends show even-handed coverage of
2 Miller's election.¹⁶ Respondents also assert that Miller turned over all editorial control of
3 Restoring Liberty to "a family member" who operated it without direction from Miller or any
4 other Committee staff.¹⁷

5 Respondents also explain some of the alleged in-kind contributions. They acknowledge
6 that Restoring Liberty's website contained an ad for Miller and a link to the Committee's
7 website, but explain that the Committee reported an in-kind contribution of \$500 per month for
8 the ad.¹⁸ As to the allegations regarding the use of Restoring Liberty's Facebook, Twitter, and
9 YouTube accounts, Respondents state that Miller, not Restoring Liberty, owns the accounts, so
10 no corporate contributions occurred.¹⁹ They also argue that Commission regulations do not
11 require disclaimers on social media platforms.²⁰ As to the use of Restoring Liberty's email lists,
12 Respondents state that all emails were sent using lists the Committee or Miller owned.²¹

¹⁶ Resp. at 5-6.

¹⁷ *Id.* at 5. It is not clear whether the "family member" referenced in the Response is the same person as the "independent contractor" Respondents claim "has been almost exclusively responsible for the content of the site over the past few years." *Id.* at 5 n.6.

¹⁸ *Id.* at 6.

¹⁹ *Id.* at 8-9. Respondents do not specifically address the allegation that the advertisers on the Restoring Liberty website made corporate contributions to the Committee. The Commission has stated that the payment of advertising space by corporate sponsors in candidate-owned publications may result in prohibited corporate contributions by those corporate sponsors. *See* Advisory Op. 1990-09 (Mueller); Advisory Op. 1990-05 (Mueller). The record does not include information regarding the sponsors' purposes for placing the ads. *See* Factual & Legal Analysis at 4-5, MUR 7024 (Van Hollen for Senate) (finding no reason to believe candidate received contributions in the form of *pro bono* legal services to challenge a Commission regulation; explaining that a thing of value given to a campaign is not a "contribution" if it was not for the purpose of influencing a federal election).

²⁰ Resp. at 8-9.

²¹ *Id.* at 9-10.

1 In addition, Respondents argue that the Complaint fails to identify any radio ad that
2 lacked a disclaimer.²² Respondents state that the yard sign identified in the Complaint was likely
3 from Miller's 2010 campaign, and the sign's owner must have simply saved and re-used it.²³
4 Respondents acknowledge that one of the Committee's 126 emails included an inadequate
5 disclaimer, but the partial disclaimer showed the Committee was responsible for the email, and
6 the mistake was quickly corrected.²⁴

7 Finally, Respondents state that all of the Committee's receipts were authentic and
8 properly reported.²⁵ With regard to the alleged in-kind contribution from the Alaska Republican
9 Party, Respondents explain that this contribution consisted of unused party brochures from
10 Miller's 2010 campaign, which the Committee repurposed and used, and consequently felt
11 obliged to report.²⁶

12 **III. LEGAL ANALYSIS**

13 **A. Alleged Corporate Contributions**

14 The Act prohibits corporations from making contributions to candidate committees and
15 prohibits those committees from knowingly accepting or receiving such contributions.²⁷ The Act
16 and Commission regulations define "contribution" and "expenditure" to include any gift of

²² Resp. at 9.

²³ *Id.* at 11. The disclaimer stated, "Copyright © 2016 Citizens for Joe Miller....Our mailing address is: Citizens for Joe Miller 250 Cushman St., Suite 2A Fairbanks, AK 99701."

²⁴ *Id.* at 10-11.

²⁵ *Id.* at 12-13.

²⁶ *Id.*

²⁷ 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b), (d).

1 money or “anything of value” for the purpose of influencing a federal election.²⁸ The term
2 “anything of value” includes in-kind contributions.²⁹ “Anything of value,” however, does not
3 include the provision of goods and services at the usual and normal charge.³⁰

4 Exempt from the definition of “contribution” and “expenditure” is “[a]ny cost incurred in
5 covering or carrying a news story, commentary, or editorial by any... Web site... unless the
6 facility is owned or controlled by any political party, political committee, or candidate[.]”³¹ This
7 exemption is known as the “press exemption” or “media exemption.”³² The press exemption
8 includes “media entities that cover or carry news stories, commentary, and editorials on the
9 Internet” as well as “bloggers and others who communicate on the Internet.”³³ A
10 communication subject to this exemption is also exempt from the Act’s disclosure, disclaimer,
11 and reporting requirements.³⁴

12 To assess whether the press exemption applies to a communication, the Commission uses
13 a two-part test.³⁵ First, it asks whether the entity engaging in the activity is a “press entity” as

²⁸ 52 U.S.C. §§ 30101(8)(A)(i), (9)(A)(i).

²⁹ 11 C.F.R. §§ 100.52(d)(1), 100.111(e)(1).

³⁰ *Id.*

³¹ 52 U.S.C. § 30101(9)(B)(i); 11 C.F.R. §§ 100.73, 100.132.

³² Advisory Op. 2010-08 (Citizens United) at 3 (“AO 2010-08”).

³³ See *Explanation and Justification for Final Rules on Internet Communications*, 71 Fed. Reg. 18,589 (Apr. 12, 2006) (hereinafter *Internet Regulations*); see Advisory Op. 2008-14 (Melothe); Advisory Op. 2005-16 (Fired Up!) (“AO 2005-16”); MUR 6247 (www.examiner.com); MUR 5928 (Kos Media, LLC).

³⁴ AO 2010-08 at 7.

³⁵ *Id.* at 4; AO 2005-16 at 4.

1 described by the Act and regulations.³⁶ Second, if the entity is a press entity, the exemption will
2 apply so long as it (a) is not owned or controlled by a political party, political committee, or
3 candidate, and (b) is acting within its “legitimate press function” in conducting the activity.³⁷
4 Commission regulations also provide that if the press entity is owned or controlled by the
5 candidate, the press exemption only applies for costs of each news story that “represents a *bona*
6 *fide* news account communicated in a publication of general circulation . . . [t]hat is part of a
7 general pattern of campaign-related news accounts that give reasonably equal coverage to all
8 opposing candidates in the circulation or listening area.”³⁸

9 Regardless of whether the press exemption applies to Restoring Liberty, the particular
10 circumstances of this case support dismissal. Miller’s unsuccessful campaign lasted only eight
11 weeks, and based on the content of posts on the Restoring Liberty website, it appears the
12 associated costs were likely small. Given these factors, an enforcement action would not be an
13 efficient use of the Commission’s resources. Therefore, the Commission exercise its
14 prosecutorial discretion and dismisses the allegation that Restoring Liberty, Miller, and the
15 Committee made or received and failed to report prohibited corporate contributions.³⁹

³⁶ AO 2010-08 at 4; AO 2005-16 at 4. The Commission has explained that when determining whether the term “press entity” applies, it “has focused on whether the entity in question produces on a regular basis a program that disseminates news stories, commentary, and/or editorials.” AO 2010-08 at 7.

³⁷ *Reader’s Digest Ass’n, Inc. v. FEC*, 509 F. Supp. 1210, 1215 (S.D.N.Y. 1981).

³⁸ 11 C.F.R. § 100.73.

³⁹ See *Heckler v. Chaney*, 470 U.S. 821 (1985). As to the allegations regarding the use of Restoring Liberty’s email list, Respondents state that Miller, not Restoring Liberty, owned the list, and included a sworn affidavit from Miller in support. Respondents state that while the Committee’s reports did not reflect an in-kind contribution from Miller for the use of the list, the Committee intends to amend its third quarter 2016 report to reflect. The allegation that the Committee sent an email soliciting contributions “from the Restoring Liberty LLC website” appears to be unsupported, as the email Respondent attached was sent from the address “Joe@JoeForLiberty.com,” which was the Committee’s website. See Compl., Ex. H; Resp. at 6. Likewise, Respondents state that the social media accounts

B. Other Allegations

Under the Act, a political committee's public communications must contain appropriate disclaimers.⁴⁰ Political committees are required to report its receipts and disbursements.⁴¹

Although the Complaint alleges that the Committee included inadequate disclaimers in radio ads and campaign materials, the only specific campaign communication the Complaint referenced was one yard sign, a sign that Respondents state was from Miller's 2010 campaign. Additionally, Respondents state that they were not aware of any campaign materials that contained insufficient disclaimers, and provided a screenshot of the Committee's online fundraising website, which contained a proper disclaimer.⁴² The information in the record suggests that the Committee sent a single email with an inadequate disclaimer, but the mistake was quickly identified and corrected. In addition, the email identified the Committee as the sender and included the Committee's mailing address, thus, recipients had some information as to who was responsible for it.⁴³ There is no information indicating the Committee's other communications violated the Commission's disclaimer requirements.

The reporting allegations appear to be unsupported. The Committee reported the in-kind contributions for the use of Miller's vehicle and campaign headquarters, and although the

the Complaint alleges belonged to Restoring Liberty actually belonged to Miller in his individual capacity, and we have no contrary information. Resp. at 7-8.

⁴⁰ 52 U.S.C. § 30120(a); 11 C.F.R. § 110.11(a)(1).

⁴¹ 52 U.S.C. § 30104(a); 11 C.F.R. § 104.3.

⁴² Resp. at 11, Ex. C.

⁴³ See Factual & Legal Analysis at 7, MUR 7004 (The 2016 Committee) ("[W]ith respect to the emails lacking full disclaimers, there was sufficient information for recipients to understand that the Committee paid for the emails . . .").

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